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SUBJECT: ARGENTINA 2006-2007 INCSR PART II: FINANCIAL CRIMES AND MONEY LAUNDERING

REF: STATE 157000

a. The following is Embassy Buenos Aires' input for the 2006-2007 International Narcotics Control Strategy Report (INCSR) part II -- Financial Crimes and Money Laundering.

Begin Text:

Argentina is neither an important regional financial center nor an offshore financial center. Money laundering related to narcotics trafficking, corruption, contraband, and tax evasion is believed to occur throughout the financial system, in spite of the efforts of the Government of Argentina (GOA) to stop it. The financial sector's gradual recovery from the 2001-02 financial crisis and post-crisis capital controls may have reduced the incidence of money laundering through the banking system. However, transactions conducted through non-bank sectors and professions, such as the insurance industry, financial advisors, accountants, notaries, trusts, and companies, real or shell, remain viable mechanisms to launder illicit funds. Tax evasion is the predicate crime in the majority of all Argentine money laundering investigations. Argentina has a long history of capital flight and tax evasion, and Argentines hold billions of dollars offshore, much of it legitimately earned money that was never taxed.

The GOA took several important steps to combat money laundering in 2006, including enacting amendments to its money laundering legislation (Law 26.087) on March 29, 2006, empowering Argentina's Financial Intelligence Unit ("Unidad de Informacion Financiera" or "UIF"), creating a new National Coordination Unit in the Ministry of Justice and Human Rights to oversee and manage overall GOA money laundering efforts, and creating a Special Prosecutors Unit within the Attorney General's Office for money laundering and terrorism finance cases. In addition, the Central Bank of Argentina (BCRA) completed plans for a specialized bank examination unit, announced in 2005, devoted specifically to money laundering and terrorism finance.

These positive actions followed the steps the GOA took in 2005 to improve the effectiveness of its money laundering

regime, including the ratification of the UN International Convention for the Suppression of the Financing of Terrorism and the Inter-American Convention Against Terrorism, and regulatory changes to improve its anti-money laundering and counterterrorist financing systems. The Central Bank of Argentina expanded its requirements for financial institutions to check transactions against the terrorism lists of the United States, European Union, Great Britain, and Canada, in addition to the UN 1267 Sanctions Committee consolidated list.

Argentina's primary anti-money laundering legislation is Law 25.246 of May 2000. Law 25.246 expands the predicate offenses for money laundering to include all crimes listed in the Penal Code, sets a stricter regulatory framework for the financial sectors, and creates the UIF under the Ministry of Justice and Human Rights. The law requires customer identification, record keeping, and reporting of suspicious transactions by all financial entities and businesses supervised by the Central Bank, the Securities Exchange Commission ("Comision Nacional de Valores" or "CNV"), and the Superintendent for Insurance ("Superintendencia de Seguros de la Nacion" or "SSN"). The law forbids the institutions to notify their clients when filing suspicious financial transactions reports, and provides a safe harbor from liability for reporting such transactions. Reports that are deemed by the UIF to warrant further investigation are forwarded to the Attorney General's Office.

As of October 31, 2006, the UIF had received 2174 reports of suspicious or unusual activities, forwarded 136 suspected cases of money laundering to prosecutors for review, and assisted prosecutors with 107 cases. There have been only two money laundering convictions in Argentina since money

laundering was first criminalized in 1989, and none since the passage of Law 25.246 in 2000.

On March 29, 2006, the Argentine Congress passed Law 26.087, amending and modifying anti-money laundering Law 25.246, in order to address Financial Action Task Force (FATF) concerns regarding the perceived inadequacies in Argentine money laundering and terrorism financing legislation and enforcement. FATF conducted a mutual evaluation of Argentina in October 2003. The mutual evaluation report was accepted at the FATF plenary in June 2004 and at the plenary meetings of the Financial Action Task Force for South America (GAFISUD) in July 2004. While the evaluation of Argentina showed the UIF to be functioning satisfactorily, it identified weaknesses in Argentina's current anti-money laundering legislation, as well as the lack of terrorist financing legislation or a national anti-money laundering/counter terrorism finance coordination strategy.

Law 26.087 responds to many of FATF's criticisms. It makes five substantive improvements to existing law: 1) lifts bank, stock exchange, and professional secrecy objections to filing suspicious activity reports; 2) partially lifts tax secrecy provisions; 3) clarifies which courts can hear requests to lift tax secrecy requests, and requires decisions within 30 days; 4) lowers the standard of proof required before the UIF can pass cases to prosecutors; and 5) eliminates the so-called "friends and family" exemption contained in Article 277 of the Argentine Criminal Code for cases of money laundering and narrows it for cases of concealment. Overall, the law clarifies the relationship, jurisdiction, and responsibilities of the UIF and the Attorney General's Office, improves information sharing and coordination, and reduces restrictions that have prevented the UIF from obtaining information needed for money laundering investigations by granting greater access to Suspicious Activity Reports (SARs) filed by banks. However, the law does not lift financial secrecy provisions on cash transaction reports.

The UIF, which began operating in June 2002, has issued resolutions widening the range of institutions and businesses required to report on suspicious or unusual transactions to

the UIF beyond those identified in Law 25.246. Obligated entities include the tax authority ("Administracion Federal de Ingresos Publicos" or "AFIP," equivalent to the U.S. IRS), Customs, banks, currency exchange houses, casinos, securities dealers, dealers in art, antiques, and precious metals, insurance companies, postal money transmitters, accountants, and notaries public. The resolutions issued by the UIF also provide guidelines for identifying suspicious or unusual transactions. In 2005, the UIF eliminated a previous resolution requiring obligated entities to report only suspicious or unusual transactions that exceeded 50,000 pesos (approximately $16,130); UIF Resolution 4/2005 now requires entities to report all suspicious or unusual transactions regardless of their amount. Suspicious or unusual transactions are now reported directly to the UIF; prior to 2004, all suspicious transactions below a 500,000 peso threshold were first reported to the appropriate supervisory body for pre-analysis due to budget constraints at the UIF. Obligated entities are required to maintain a database of information related to client transactions, including suspicious or unusual transaction reports, for at least five years and must respond to requests from the UIF for further information within 48 hours.

In September 2006, Congress passed Law 26.119, which amends Law 25.246 to modify the composition of the UIF. In particular, the new law reorganizes the UIF's executive structure from a five member directorship with rotating presidency to a structure that has a permanent, politically appointed President and Vice President. Law 26.119 also establishes a UIF Board of Advisors, comprised of representatives of key government entities -- approved by the Executive Power -- including the Central Bank, AFIP, the Securities Exchange Commission, the national

counter-narcotics secretariat (SEDRONAR), and the Justice, Economy, and Interior Ministries. The Advisory Board's opinions on UIF decisions and actions are non-binding.

The Central Bank requires by resolution that all banks maintain a database of all transactions exceeding 10,000 Argentine pesos (approximately $3,225), and periodically submit the data to the Central Bank. Law 25.246 requires banks to make available to the UIF upon request records of transactions (equivalent of CTRs) involving the transfer of funds (outgoing or incoming), cash deposits, or currency exchanges that are equal to or greater than 10,000 pesos. The UIF further receives copies of the declarations to be made by all individuals (foreigners or Argentine citizens) entering or departing Argentina with over US$10,000 in currency or monetary instruments. These declarations are required by Resolutions 1172/2001 and 1176/2001 issued by the Argentine Customs Service in December 2001. In 2003, the Argentine Congress passed Law 22.415/25.821, which would have provided for the immediate fine of 25 percent of the undeclared amount, and for the seizure and forfeiture of the remaining undeclared currency and/or monetary instruments. However, the President vetoed the law because it allegedly conflicted with Argentina's commitments to MERCOSUR (Common Market of the Southern Cone).

Argentina's Narcotics Law of 1989 authorizes the seizure of assets and profits, and provides that these or the proceeds of sales will be used in the fight against illegal narcotics trafficking. Law 25.246 provided that proceeds of assets forfeited under this law can also be used to fund the UIF.

Although Law 25.246 of 2000 expands the number of predicate offenses for money laundering beyond narcotics-related offenses and created the UIF, it limits the UIF's role to investigating only money laundering arising from six specific crimes. The law also defines money laundering as an aggravation after the fact of the underlying crime. A person who commits a crime cannot be prosecuted for laundering money obtained from the crime; only someone who aids the criminal after the fact in hiding the origins of the money can be guilty of money laundering. Another impediment to Argentina's anti-money laundering regime is that only

transactions (or a series of related transactions) exceeding 50,000 pesos can constitute money laundering; transactions below 50,000 pesos can constitute only concealment, a lesser offense.

Also in response to FATF concerns, as reported in the mutual evaluation report, the Argentine government established a new National Coordination Unit in the Ministry of Justice and Human Rights, which represents Argentina to the FATF/GAFI and GAFISUD, and has the lead in developing money laundering and terrorism finance legislation, and manages the government's overall money laundering and terrorism finance efforts.

Terrorism and terrorist acts are not specifically criminalized under Argentine law. Because these acts are not autonomous offenses, terrorist financing is not a predicate offense for money laundering. In 2005, Argentina ratified the UN International Convention for the Suppression of the Financing of Terrorism and the Inter-American Convention Against Terrorism, but it has not yet passed domestic legislation. During 2005 and 2006, several bills were introduced in the Congress to implement the provisions of those treaties under Argentine law. Various ministries in the government, as well as the "Comision Mixta" (Mixed Commission -- comprised of the Central Bank, Congress, Ministry of Economy, SEDRONAR, and Judicial branch), have also developed draft counter terrorism finance laws. Argentina's new National Coordinator is responsible for reviewing and harmonizing the draft laws, with the goal of completing a final draft for the President to submit to Congress.

In the absence of legislation, the Central Bank issued Circular A 4273 in 2005 (titled, "Norms on 'Prevention of

Terrorist Financing'") requiring banks to report any detected instances of the financing of terrorism. The Central Bank has regularly updated and modified the original Circular, with the latest being Circular A 4599 (November 17, 2006). Bankers complain that the regulation is not backed by any legal definition of what constitutes terrorist financing in Argentina, and that the absence of domestic legislation means that they are not protected from lawsuits by clients if they report suspected cases of terrorist financing. The Central Bank of Argentina also issued Circular B-6986 in 2004, instructing financial institutions to identify and freeze the funds and financial assets of the individuals and entities listed on the list of Specially Designated Global Terrorists designated by the United States pursuant to E.O. 13224. It modified this circular with Resolution 319 in October 2005, which expands Circular B-6986 to require financial institutions to check transactions against the terrorist lists of the United Nations, United States, European Union, Great Britain, and Canada. No assets have been identified or frozen to date.

Working with the United States Department of Homeland Security's Office of Immigration and Customs Enforcement (ICE), Argentina has established a Trade Transparency Unit (TTU). The TTU examines anomalies in trade data that could be indicative of customs fraud and international trade-based money laundering. The TTU will generate, initiate, and support investigations and prosecutions related to trade-based money laundering and the movement of criminal proceeds across international borders. One key focus of the TTU, as well as of other TTUs in the region, will be financial crimes occurring in the tri-border area, which is bounded by Puerto Iguazu, Argentina, Foz do Iguazu, Brazil, and Ciudad del Este, Paraguay. The creation of the TTU was a positive step towards complying with FATF Special Recommendation VI on Terrorist Financing via alternative remittance systems. Trade- based systems such as hawala often use fraudulent trade documents and over and under invoicing schemes to provide counter valuation in value transfer and settling accounts.

The GOA remains active in multilateral counternarcotics and international anti-money laundering organizations. It is a

member of the Organization of American States Inter-American Drug Abuse Control Commission (OAS/CICAD) Experts Group to Control Money Laundering, the FATF (or GAFI), and GAFISUD. The GOA is a party to the 1988 UN Drug Convention, the UN International Convention for the Suppression of the Financing of Terrorism, the Inter-American Convention on Terrorism, and the UN Convention against Transnational Organized Crime. Argentina ratified the UN Convention Against Corruption on August 28, 2006. Argentina has been a member of the Egmont Group since July 2003 and participates in the "3 Plus 1" Counter-Terrorism Dialogue between the United States and the Triborder Area countries (Argentina, Brazil and Paraguay). The UIF has signed memoranda of understanding regarding the exchange of information with a number of financial intelligence units, including Australia, Belgium, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Honduras, Panama, Paraguay, Peru, Romania, Spain, and Venezuela. The GoA and the USG have a Mutual Legal Assistance Treaty that entered into force in 1993, and an extradition treaty that entered into force in 2000.

With strengthened mechanisms available under Laws 26.119, 26.087, and 25.246, the ratification of the UN International Convention for the Suppression of the Financing of Terrorism, a reorganized UIF, and enhanced enforcement capability via the Special Prosecutors Unit and Central Bank's specialized bank examination unit, Argentina has the legal and regulatory capability to prevent and combat money laundering more effectively. However, additional legislative and regulatory changes would significantly improve the anti-money laundering/counterterrorism finance regime in Argentina, particularly the passage of domestic legislation that criminalizes the financing of terrorism. Additionally, to comply with the latest FATF recommendation on the regulation

of bulk money transactions, Argentina will need to review the legislation vetoed in 2003 to find a way to regulate such transactions consistent with its MERCOSUR obligations. Continuing priorities are the forceful sanctioning of officials and institutions that fail to comply with the reporting requirements of the law, the pursuit of a training program for all levels of the criminal justice system, and the provision of the necessary resources to the UIF to carry out its mission. Additionally, there is a need for increased public awareness of the problem of money laundering and its connection to narcotics, corruption, and terrorism. Finally, the new National Coordinator's Office should alleviate the past problems of inadequate coordination and cooperation between government agencies. It remains to be seen whether the National Coordinator will be able to develop and implement a national strategy on money laundering that would link and coordinate GOA resources devoted to intelligence and to counternarcotics and anti-financial crime efforts.

End Text.
WAYNE